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REGION VII

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION VII

IN THE MATTER OF:

Des Moines Barrel and  
Drum Site  
Des Moines, Polk County, Iowa

Caldwell's Des Moines Barrel  
and Drum Co., Inc.,

Thomas W. Caldwell,

Wayne C. Priest and Ruth E.  
Priest,

Virgil C. Smith,

Respondents

Proceeding Under Section  
106(a) of the Comprehensive  
Environmental Response,  
Compensation, and Liability  
Act of 1980, 42 U.S.C.  
§ 9606(a)

UNILATERAL ADMINISTRATIVE  
ORDER FOR REMOVAL RESPONSE  
ACTIVITIES

U.S. EPA Region VII

CERCLA

Docket No. VII-92-F-0001

UNILATERAL ADMINISTRATIVE ORDER  
FOR REMOVAL RESPONSE ACTIVITIES

30323148



Superfund

## TABLE OF CONTENTS

|        |   |    |
|--------|---|----|
| I.     | PRELIMINARY STATEMENT . . . . .   | 1  |
| II.    | DEFINITIONS . . . . .   | 2  |
| III.   | FINDINGS OF FACT . . . . .  | 3  |
| IV.    | CONCLUSIONS OF LAW . . . . .  | 8  |
| V.     | DETERMINATIONS . . . . .  | 9  |
| VI.    | ORDER . . . . .   | 10 |
| 1.     | Opportunity to Confer . . . . .   | 10 |
| 2.     | Notice of Intent to Comply . . . . .                                      | 11 |
| 3.     | Designation of Contractor and Project Coordinator . . . . .               | 11 |
| 4.     | Work to Be Performed . . . . .  | 13 |
| 5.     | Access to Property and Information . . . . .                              | 17 |
| 6.     | Record Retention, Documentation, Availability of<br>Information . . . . . | 18 |
| 7.     | Off-Site Policy . . . . .   | 18 |
| 8.     | Compliance With Other Laws . . . . .                                      | 19 |
| 9.     | Emergency Response and Notification of Releases . . . . .                 | 19 |
| VII.   | EPA REVIEW OF SUBMISSIONS . . . . .                                       | 20 |
| VIII.  | PARTIES BOUND . . . . .   | 21 |
| IX.    | FAILURE TO ATTAIN PERFORMANCE STANDARDS . . . . .                         | 22 |
| X.     | ADDITIONAL RESPONSE ACTIONS . . . . .                                     | 23 |
| XI.    | AUTHORITY OF THE EPA ON-SCENE COORDINATOR AND RPM . . . . .               | 24 |
| XII.   | DELAY IN PERFORMANCE . . . . .  | 24 |
| XIII.  | ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE . . . . .                        | 25 |
| XIV.   | CONFIDENTIAL BUSINESS INFORMATION . . . . .                               | 26 |
| XV.    | RESERVATION OF RIGHTS . . . . .   | 27 |
| XVI.   | OTHER CLAIMS . . . . .  | 28 |
| XVII.  | AMENDMENTS . . . . .  | 29 |
| XVIII. | TERMINATION . . . . .   | 30 |
| XIX.   | ACCESS TO ADMINISTRATIVE RECORD . . . . .                                 | 30 |
| XX.    | EFFECTIVE DATE . . . . .  | 31 |

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Docket No. VII-92-F-0001

I. PRELIMINARY STATEMENT

This Order is issued to Caldwell's Des Moines Barrel and Drum, Co., Inc. and Thomas W. Caldwell (Caldwell), Wayne C. Priest and Ruth E. Priest (Priests), and Virgil C. Smith (Smith) who are referred to collectively in this order as "Respondents". This Order pertains to property known as the Des Moines Barrel and Drum Site which is located at 1824 Scott Street

in Des Moines, Polk County, Iowa, (the "Site").

This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 (CERCLA), and delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-B.

This Order requires the Respondents to undertake and complete removal activities described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at the Site. EPA may subsequently determine that additional response action is necessary.

EPA has notified the State of Iowa of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

## II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order or in the documents attached

to this Order or incorporated by reference into this Order, the following definitions shall apply:

A. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the end of the next working day.

B. "Site" shall mean the Des Moines Barrel and Drum facility located at 1824 Scott Street in Des Moines, Polk County, Iowa which is composed of three parcels as shown on the map which is attached as Figure 1 to this Order and all areas contaminated with releases of hazardous substances from the facility.

C. "Work" shall mean all activities Respondents are required to perform under this Order.

### **III. FINDINGS OF FACT**

A. Respondent Caldwell's Des Moines Barrel and Drum Co., Inc. is a corporation organized under the laws of the State of Iowa, which, since about 1986, owns and/or operates a barrel and drum recycling/reconditioning business located at 1824 Scott Street in Des Moines, Iowa.

B. Respondent Thomas W. Caldwell is the manager, president, director, and shareholder of Caldwell's Des Moines Barrel and Drum Co., Inc. which conducts a barrel and drum

recycling/reconditioning business at the Site and is therefore a current operator of the facility.

C. Respondents Wayne C. Priest and Ruth E. Priest are the current owners of most of the real property at the Site, with the exception of the west half of Lots 30 and 31 located in Parcel 2 of the Site. Wayne C. Priest operated the drum recycling business at the Site from approximately 1945 to 1977.

D. Respondent Virgil C. Smith is the current owner of the west half of Lots 30 and 31 located in Parcel 2 of the Site. Virgil C. Smith operated the drum recycling business from 1977 until declaring bankruptcy in 1986.

E. The Site includes three parcels of land totaling approximately two and one-half acres. (See Figure 1 for location and lot numbers.) Located on Parcel 1 are approximately 20,000 to 40,000 used or reconditioned drums and barrels which cover much of the parcel. Also located on Parcel 1 is a drum recycling building, an incinerator, a baghouse, paint booth, caustic rinse tank, a sump, underground tank, a small company office building and a motorcycle parts recycling business. Parcel 2 has been used for trailer parking and drum storage, and currently appears vacant except for a few scattered drums. Parcel 3 has been used for drum storage and is currently vacant.

F. The recycling/reconditioning operations at Caldwell's Des Moines Barrel and Drum generate wastes streams containing lead and volatile organic compounds (VOCs). Lead found in the wastes generated by the operation of the baghouse failed the

Toxicity Characteristic Leaching Procedure (TCLP) analysis at 23 milligram per liter (mg/l). Lead found in a 55-gallon drum located in the northwest corner of Parcel 1 failed the TCLP analysis at 9.8 mg/l. The regulatory level is 5.0 mg/l. A sample of the incinerator ash failed TCLP analysis for trichloroethylene, a VOC, at 2.1 mg/l. The regulatory level is 0.5 mg/l for trichloroethylene.

G. The is located in a primarily industrial area. It is partially but not completely fenced. There is one residence located adjacent to the Site. A larger residential area is located approximately one-quarter mile to the west of the Site. Within one mile of the Site there are two parks, three schools, several office buildings including the State Capitol and several commercial establishments.

H. The Site is located on flat terrain in the flood plain of the Des Moines River about three-quarters of a mile from the river. Surficial deposits in the vicinity are of glacio-fluvial origin consisting of overbank deposits of sand, clayey silts, and silty clays. In places at the Site, the surface soil has been substantially altered by the additions of sand and sawdust. The water table lies approximately 10 to 12 feet below the soil surface. Regional groundwater flow is generally toward the south and southeast.

I. EPA investigations found lead in surficial soils at the Site at levels up to 39,000 milligrams per kilogram (mg/kg) and chromium in surficial soils at levels up to 6300 milligrams per

kilogram (mg/kg).

J. EPA investigations also found volatile organic compounds (VOCs) in groundwater on site and at the perimeter of the Site (trichloroethene, xylenes, 1,2-dichloropropane, and benzene). The 1,2-dichloropropane was detected at 6.2 ug/l which exceeds the Maximum Contaminant Level (MCL) of 5 ug/l. Benzene was detected at 21 ug/l which exceeds the (MCL) of 5 ug/l.

K. EPA investigations also found ignitable hazardous waste (flashpoints less than 60 degrees Centigrade) in several tanks, vats and a sump on Site. These seven ignitable waste streams were caustic tank sludge, material found in the sump adjacent to the caustic tank, liquid from the drum rinse tank, a sample taken from a 5-gallon paint can located next to the paint booth, the material found in the underground storage tank, a composite sample taken from a group of three open-top drums found in the northwest corner of Parcel 1, and a sample from a drum of yellow paint found in a 55-gallon drum located in the northwest corner of Parcel 1.

L. In 1984 there were two fires on the Site resulting from the proximity of ignitable waste to the incinerator. There are about 20,000 to 40,000 drums stacked to a height of 8 to 10 feet over much of the approximately two acre main processing area of the facility. It is likely that at least some of these drums contain flammable wastes. A fire at the Site could generate smoke and fumes that would expose any residents of the nearby house and other residential and work populations depending on



weather conditions.

M. There are approximately 20,000 to 40,000 drums on site. The operator claims the drums contain less than one inch of residue. EPA investigations found several drums that were nearly full or contained more than one foot of material that was ignitable hazardous waste (flashpoints less than 60 degrees Centigrade). Some of the drums accumulated on site originally contained oil, paint and other products that could be expected to be ignitable or toxic. Residues in areas where the drums have been cleaned out were found to contain volatile organic compounds, to be toxic according to the Toxicity Characteristic Leaching Procedure (TCLP) analysis and to be ignitable.

N. Lead is toxic to man and animals via oral, dermal, and respiratory exposure routes. Metallic lead adversely affects hematopoietic systems, central, and peripheral nervous systems, and kidneys in humans and animals. Lead is slightly to moderately soluble in water. It is persistent in the environment and bioaccumulates significantly.

O. There are two forms of chromium which can cause adverse health effects. Hexavalent chromium (Cr VI) is the more toxic of the two. Exposure to Cr VI can cause DNA and chromosome damage to humans. Inhalation may cause irritation and inflammation of the nasal mucosa and ulceration of the nasal septum. Exposure to Cr VI has also resulted in documented human kidney damage. Trivalent chromium (Cr III) is less toxic. However, exposure to Cr III often results in contact dermatitis.

#### IV. CONCLUSIONS OF LAW

Based on the Findings of Fact set forth above, and the Administrative Record supporting this Order, EPA determines that:

1. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. Each substance identified in the Findings of Fact above is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
3. Each Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Respondents Caldwell's Des Moines Barrel and Drum Co., Inc., Thomas C. Caldwell, Wayne C. Priest and Ruth E. Priest are present "owners" and/or "operators" of the Site, and liable persons as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20) and Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).
5. Respondent Virgil C. Smith is a present "owner" and/or "operator" of the Site, and liable person as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20) and Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), a past owner and/or operator of the Site at the time of disposal under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2) and a person who arranged for disposal or transport for disposal of hazardous substances at the Site under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
6. The conditions described in the Findings of Fact above constitute an actual or threatened "release" into the

"environment" under Section 101(8), and (22) of CERCLA, 42 U.S.C. § 9601(8) and (22).

7. The conditions present at the Site constitute a threat to public health or welfare or the environment based upon consideration of the factors set forth in the NCP, Section 300.415(b) (2). These factors include, but are not limited to, the following:

- a. actual or potential exposure to hazardous substances by nearby human populations;
- b. actual or potential contamination of drinking water supplies;
- c. hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;
- d. high levels of lead in soils largely at or near the surface, that may migrate;
- e. threat of fire or explosion;
- f. the unavailability of other appropriate federal or state response mechanisms to respond to the releases.

#### **V. DETERMINATIONS**

Based upon the foregoing findings of fact and conclusions of law, the Regional Administrator, EPA Region VII, has determined that:

1. The actual or threatened release of hazardous

substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment;

2. These removal actions required by this Order are necessary to protect the public health, welfare and the environment; and

3. The removal actions required by this Order, if promptly and properly performed, are consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, as amended, and CERCLA.

#### VI. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, EPA hereby Orders that Respondents undertake the following actions:

##### 1. Opportunity to Confer

On or before the effective date of this Order, that is, within ten (10) days after the Order is signed by the Regional Administrator or his designee, Respondent(s) may request a conference with EPA. Any such conference shall be held within seven days from the date of request unless extended by the EPA in writing. At any conference held pursuant to the request, Respondents may appear in person, or be represented by an attorney or other representative.

The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondents intend to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order or to seek resolution of potential liability. Requests for a conference shall be directed to Gerhard Braeckel, Assistant Regional Counsel, at (913) 551-7471, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**2. Notice of Intent to Comply**

Each Respondent shall notify EPA in writing within ten (10) days after the effective date of this Order of Respondent's intention to comply with this Order. Failure of Respondent to provide such notification within this time period shall be a violation of this Order.

**3. Designation of Contractor and Project Coordinator**

Respondents shall retain a qualified hazardous waste contractor to supervise and direct this response action. Respondents shall notify EPA by certified or express mail of the name and qualifications of such contractor within twenty (20) days of the effective date of this Order or such longer period as the EPA may provide. Respondents shall also notify EPA of the name and qualifications of any other contractors or

subcontractors retained to perform work under this Order at least five (5) days prior to commencement of such work. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondent(s). If EPA disapproves of any selected contractor or subcontractor, Respondent(s) shall retain a different contractor within ten (10) days following EPA's disapproval and shall notify EPA of that contractor's name and qualifications.

Within twenty (20) days after the effective date of this Order, the Respondents shall designate a Project Coordinator who shall be responsible for administration of all the Respondents' actions called for by the Order. Respondents shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on site or readily available during site work. EPA retains the right to disapprove of any Project Coordinator named by the Respondents. If EPA disapproves of any selected Project Coordinator, Respondent(s) shall designate a different Project Coordinator and submit the information required above within 10 business days following EPA's disapproval.

The EPA has designated Diana Engeman of the Superfund Branch, or her designee as its Regional Project Manager(RPM). Respondents shall direct all submissions required by this Order, unless otherwise specified, to Diana Engeman, RPM, Superfund Branch, U.S. EPA, Region VII, 726 Minnesota Ave., Kansas City,

Kansas 66101, telephone number (913) 551-7746. Receipt by the Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondents.

**4. Work to Be Performed**

Respondents shall perform at a minimum the following response activities:

**A. Work Plan and Implementation**

Within 30 days after the effective date of this Order, the Respondents shall submit to EPA for approval a Work Plan for performing the removal activities as set forth in the Statement of Work which is attached hereto as Attachment A. The Work Plan shall provide a description of and an expeditious schedule for the activities to be conducted to comply with this Order. The Work Plan shall address the site's key problem areas which include:

- (1) Site access restriction;
- (2) Waste piles of toxic incinerator ash (TCLP/TCE) and toxic baghouse dust (TCLP/Pb);
- (3) Ignitable liquid waste in above-ground and below-ground storage tanks, sumps and drums;
- (4) Caustic rinse water and sludges;
- (5) Removal and management of the 20,000 to 40,000 drums currently on site so as to identify drums that contain more than one inch of hazardous

waste, separate drums that can be reconditioned from unreconditionable drums, and remove the drums to allow for the cleanup of lead contaminated soils under the drums.

- (6) Removal and disposal of lead and chrome contaminated soil.
- (7) Characterize the extent and magnitude of any groundwater contamination.

EPA may approve, disapprove, require revisions to, or modify the Work Plan. Respondents shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, and with any subsequent modifications to it, the Work Plan shall be incorporated into and fully enforceable under this Order. After the effective date of this Order, the commencement or undertaking of any removal actions without EPA approval is a violation of this Order.

#### B. Health and Safety Plan

The Respondents shall submit within 30 days after the effective date of this order, for EPA review and comment, a plan that ensures the protection of the public health and safety during performance under this Order. This plan shall include, among other things, applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. In addition, the plan shall address, if appropriate, contingency planning. Respondents shall implement the plan, incorporating any comments received by EPA, during the pendency of the removal



action.

C. Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform analyses participates in a QA/QC program that complies with the appropriate EPA guidance, including but not limited to those guidance documents listed below. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. The Respondents shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

Upon request by EPA, the Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by the Respondents while performing work under this Order. The Respondents shall notify EPA not less than 10 days in advance of any sample collection activity. In addition, EPA shall have the right to take any additional samples that it deems necessary.

The following documents should be used for QA/QC and sampling: Quality Assurance/Quality Control Guidance for Removal Activities; Sampling QA/QC Plan and Data Validation Procedures, OSWER Directive Number 9360.4-01; Environmental Response Team

Standard Operating Procedures, OSWER Directive Numbers 9360.4-02 through 9360.4-08.

D. Reporting

The Respondents shall submit a written progress report to EPA concerning activities undertaken pursuant to this Order every seventh day subsequent to the date of receipt of EPA's approval of the Work Plan until termination of this Order unless otherwise directed by the EPA On-Scene Coordinator or EPA RPM. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

E. Final Report

Within 30 days of completion of all response actions required under this Order, the Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform to, at a minimum, the requirements set forth in section 300.165 of the NCP (OSC Reports). In addition, the final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate

destination of those materials, a presentation of the analytical results of all sampling and analyses performed and accompanying appendices containing all relevant paperwork accrued during the action (e. g., manifests, invoices, bills, contracts, and permits).

##### **5. Access to Property and Information**

Respondents shall provide or obtain access to the Site and off-site areas subject to or affected by the work under this Order, and to all records and documentation related to the conditions at the Site and the activities conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and the State. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct activities. The Respondents shall submit to EPA, upon request, the results of all sampling or tests and all other data generated by the Respondents, their contractor(s), or on the Respondents' behalf in the course of implementing this Order. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under Federal law.

Within 15 days after the effective date of this Order, or as otherwise specified in writing by the RPM, Respondents shall obtain all necessary access agreements if the Site or other areas where work under this Order is to be performed, is owned by, or in possession of, someone other than the Respondents.

Respondents shall immediately notify EPA in the event that after using their best efforts they are unable to obtain such agreements.

Respondents shall describe in writing their efforts to obtain access. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as EPA deems appropriate.

**6. Record Retention, Documentation, Availability of Information**

Respondents shall preserve all documents and information of any kind relating to the work performed under this Order, or the hazardous substances found on or released from the Site for six years following completion of the response activities required by this Order. At the end of this six year period and before any documents or information are destroyed, Respondent(s) shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the original or copies of such documents and information to EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of EPA.

**7. Off-Site Policy**

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or

disposal shall be treated, stored, or disposed of at a facility in compliance with the EPA Revised Off-Site Policy, OSWER Directive Number 9834.11, November 13, 1987, enacted pursuant to 42 U.S.C. § 9621(d) (3), as determined by the OSC/RPM.

#### **8. Compliance With Other Laws**

Except as provided in Section 121(e) of CERCLA with regard to the need for permits for on-site action, all actions required pursuant to this Order shall be undertaken in accordance with the requirements of all other applicable local, state, and federal laws and regulations. In accordance with 40 C.F.R. § 300.415(i), all actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, state environmental, or facility siting laws.

#### **9. Emergency Response and Notification of Releases**

Upon the occurrence of any incident or change in Site conditions during the activities conducted pursuant to this Order that causes or threatens an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment. The Respondents shall also immediately notify the OSC/RPM or, in the event of his/her unavailability,

the Regional Duty Officer in the Emergency Planning and Response Branch, EPA Region VII, at (913) 236-3778 of the incident or Site conditions. In addition, in the event of an actual release of a hazardous substance, Respondents shall also immediately notify EPA's National Response Center at telephone number (800) 424-8802. The Respondents shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such an release.

#### **VII. EPA REVIEW OF SUBMISSIONS**

After review of any deliverable, plan, report or other item which is required to be submitted for review and approval pursuant to this Order, EPA may: (a) approve the submission; (b) approve the submission with modifications; (c) disapprove the submission and direct Respondents to re-submit the document after incorporating EPA's comments; or (d) disapprove the submission and assume responsibility for performing all or any part of the response action. As used in this Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in subsections (a) or (b) of this paragraph.

In the event of approval or approval with modifications by EPA, Respondents shall proceed to take any action required by the plan, report, or other item, and in accordance with the schedule

therein as approved or modified by EPA. Once approved, and with any subsequent modifications to it, the Work Plan shall be incorporated into and be fully enforceable under this Order. After the effective date of this Order, the commencement or undertaking of any removal actions without EPA approval is a violation of this Order.

Upon receipt of a notice of disapproval or a request for a modification, Respondents shall, with fourteen (14) day or such longer time as specified by the EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report or other item for EPA review and approval. Notwithstanding the notice of disapproval, or approval with modification, Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

If any submission is not approved by EPA, Respondents shall be deemed to be in violation of this Order.

#### VIII. PARTIES BOUND

This Order applies to and is binding upon Respondents and their successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter such Respondent's responsibilities under this Order. Respondents are jointly and severally responsible for carrying

out all activities required of them by this Order. The compliance or noncompliance by one or more Respondent(s) with all of this Order shall not in any way excuse or justify noncompliance by any other Respondent.

Respondents shall provide a copy of this Order to all contractors, subcontractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to this Order prior to the date such work is initiated. Respondents shall ensure that their contractors, subcontractors, laboratories and consultants comply with this Order. Respondents shall be responsible for any noncompliance.

#### IX. FAILURE TO ATTAIN PERFORMANCE STANDARDS

In the event that EPA determines that additional response activities are necessary to meet applicable Performance Standards, EPA will notify Respondents that additional response actions are necessary. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional response activities are necessary to meet any applicable Performance Standards, Respondents shall submit for approval by EPA a Work Plan for the additional response activities. The plan shall conform to the applicable requirements of this Order. Upon EPA's approval of the plan pursuant to the Section of this Order regarding EPA Review of Submissions, Respondents shall implement the plan for additional response activities in accordance with



the provisions and schedule contained therein.

#### X. ADDITIONAL RESPONSE ACTIONS

EPA may determine that in addition to the Work identified in this Order and attachments to this Order, additional response activities may be necessary to protect human health and the environment. If EPA determines that additional response activities are necessary, EPA may require Respondents to submit a work plan for additional response activities. EPA may also require Respondents to modify any plan, design, or other deliverable required by this Order, including any approved modifications.

Respondents shall notify EPA of their intent to perform such additional response activities within seven (7) days after receipt of EPA's request for additional response activities.

Not later than fifteen (15) days after receiving EPA's notice that additional response activities are required pursuant to this Section, Respondents shall submit a work plan for the response activities to EPA for review and approval. Upon approval by EPA, the work plan is incorporated into this Order as a requirement of the Order and shall be an enforceable part of this Order. Upon approval of the work plan by EPA, Respondents shall implement the work plan according to the standards, specifications, and schedule in the approved work plan.

## XI. AUTHORITY OF THE EPA ON-SCENE COORDINATOR AND RPM

The EPA OSC/RPM or his/her designee will be responsible for overseeing the implementation of this Order. The EPA OSC/RPM shall have the authority vested in an OSC/RPM by the NCP at 40 CFR Part 300, as amended, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by EPA or the Respondent(s) at the Site. Absence of the OSC/RPM from the Site shall not be cause for stoppage of work unless specifically directed by the OSC/RPM.

EPA and the Respondents shall have the right to change their respective designated OSC/RPM or Project Coordinator. EPA shall notify the Respondents, and Respondents shall notify EPA, as early as possible before such a change is made. Notification may initially be verbal, but shall be followed promptly by written notice.

## XII. DELAY IN PERFORMANCE

Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondents under the terms of this paragraph shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents obligations to fully perform all obligations under the terms and conditions of this Order.

Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's OSC/RPM within forty-eight (48) hours after Respondents first knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within five (5) working days after notifying EPA by telephone, Respondents shall provide written notification fully describing the nature of the delay, any justification of delay, any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measure planned and taken to minimize the delay, and a schedule for implementing the measure that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

#### **XIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE**

Violation of this Order may subject the Respondent(s) to civil penalties of up to twenty-five thousand dollars (\$25,000) for each day the violation occurs, as provided in section 106(b) (1) of CERCLA, 42 U.S.C. § 9606 (b) (1). The Respondent(s) may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of violation of this order, as provided in section 107(c)

(3) of CERCLA, 42 U.S.C. § 9607 (c) (3). Should Respondent(s) violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to section 106 of CERCLA, 42 U.S.C. § 9606.

#### **XIV. CONFIDENTIAL BUSINESS INFORMATION**

Respondents may assert a business confidentiality claim covering all or part of the information submitted pursuant to this Order. As provided in Section 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F), monitoring data or analysis of monitoring data pertaining to disposal activities, hydrogeologic or geologic data, and ground water monitoring data shall not be entitled to confidential treatment. The information covered by such a claim will be disclosed by EPA only to the extent and by the procedures specified in 40 C.F.R. Part 2, Subpart B. Such a claim may be made by placing on or attaching to the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend or other suitable form of notice employing language such as "trade secret", "proprietary", or "company confidential". Allegedly confidential portions of otherwise non-confidential documents should be clearly identified and may be submitted separately to facilitate identification and handling by EPA. If confidential treatment is sought only until a certain date or occurrence of a certain event, the notice should so state. If no such claim

accompanies the information when it is received by EPA, it may be made available to the public without further notice to Respondents.

#### XV. RESERVATION OF RIGHTS

Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall be construed to prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, or from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondents in the future to perform additional activities pursuant to CERCLA and any other applicable law.

As provided by this Order, EPA expressly reserves the right to disapprove of work performed by Respondents; to halt work being performed by Respondents if Respondents have not complied with an approved Work Plan or this Order, or at any time EPA deems necessary to protect public health, welfare, or the environment and to perform such work; to request and require hereunder that Respondents correct and/or reperform any and all work disapproved by EPA; and/or request or require that

Respondents perform response actions in addition to those required by this Order. In the event that EPA requires Respondents, and Respondents decline to correct and/or reperform work that has been disapproved by EPA and/or to perform response actions in addition to those required by this Order, EPA reserves the right to undertake such actions and seek reimbursement of the costs incurred, and/or seek any other appropriate relief. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred and/or take any other action authorized by law.

#### XVI. OTHER CLAIMS

By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from acts or omissions of, nor shall the United States or EPA be held as a party to any contract entered into by, the Respondent(s) or its/their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order.

This Order does not constitute any decision on preauthorization of funds under section 111(a) (2) of CERCLA, 42 U.S.C. § 9611(a) (2).

Nothing in this Order shall constitute a satisfaction or release from any claim or cause of action against the Respondents

or any person for any liability such person may have under CERCLA, any other applicable statutes or regulations or the common law including but not limited to any claims of the United States for damages and interest under section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

#### XVII. AMENDMENTS

This Order, other than the Work Plan/Statement of Work, may only be amended in writing by signature of the Regional Administrator of EPA Region VII. Amendments to the Work Plan/Statement of Work may be made in writing by the OSC/RPM or at the OSC/RPM's oral direction. If the OSC/RPM makes an oral modification, it will be memorialized in writing within five (5) days; the effective date of the modification shall be the date of the OSC/RPM's oral direction. If Respondents seek permission to deviate from the approved Work Plan, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed Work Plan modification and its basis.

No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondent(s) shall be construed as relieving the Respondents of their obligation to obtain such formal approval as may be required by this Order, to comply with the requirements of this Order unless formally modified.

No extensions to the time frames required by this Order

shall be granted without sufficient cause. All extensions must be requested, in writing, and shall not be deemed accepted unless approved, in writing, by EPA.

#### XVIII. TERMINATION

When EPA determines, after EPA's review of the Final Report, that all work has been fully performed in accordance with this Order and no additional response action are necessary, EPA will provide notice to the Respondents. If EPA determines that all removal activities have not been completed in accordance with this Order, EPA will notify the Respondents, provide a list of the deficiencies, and require that Respondents amend the Work Plan to correct such deficiencies.

The Respondents shall implement the amended Work Plan and shall submit an amended Final Report in accordance with the EPA notice. Failure to implement the approved amended Work Plan will be a violation of this Order.

#### XIX. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting the issuance of this Order will be available for review at the EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas.



XX. EFFECTIVE DATE

This Order shall be effective ten (10) days after the Order is signed by the Regional Administrator or his designee. All times for performance of ordered activities shall be calculated from this effective date.

IT IS SO ORDERED

BY: Morris R. Skincamp Jr.  
Morris Kay  
Regional Administrator  
Region VII  
U.S. Environmental Protection Agency

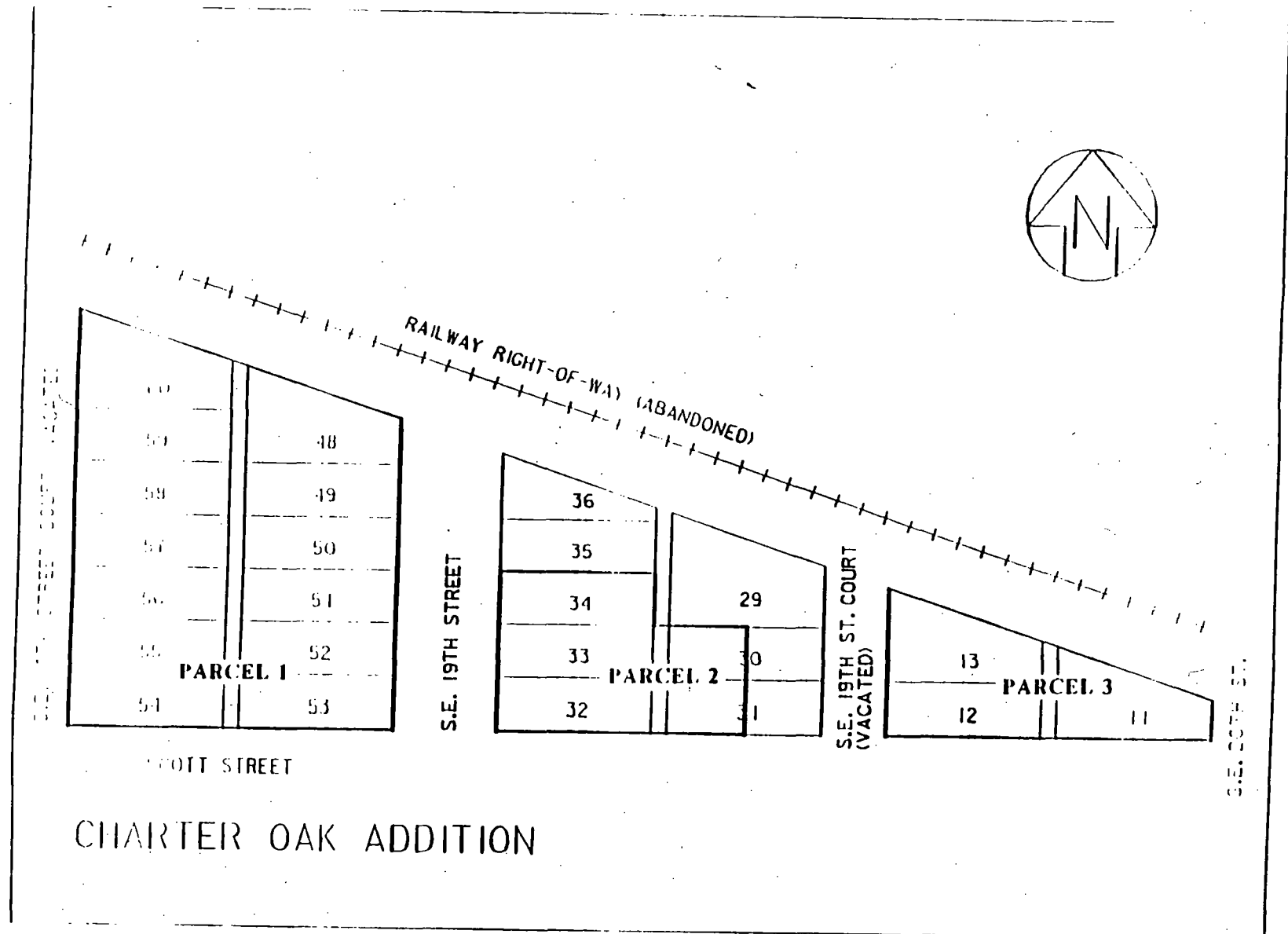
DATE: 10/9/91

Gerhardt Braeckel  
Gerhardt Braeckel  
Assistant Regional Counsel  
Region VII  
U.S. Environmental Protection Agency

DATE: 10/9/91

EFFECTIVE DATE: 10/19/91

FIGURE 1  
SITE PROPERTY



Reference: Polk County Tax Assessor

ATTACHMENT A  
STATEMENT OF WORK

DES MOINES BARREL AND DRUM  
1824 Scott Street  
Des Moines, Iowa

The activities described in this Scope of Work are to be undertaken for the purposes of collection, containerization, and disposal of all hazardous wastes now on site. This is to include all process wastes, as well as all contaminated soil or debris. Removal and management of drums currently on-site must occur to facilitate the sampling of soils beneath these drums and the making of a hazardous waste determination and appropriate disposition of those containing more than one inch of any material. Concurrently with these activities, additional wells will be installed and samples collected to more accurately define the extent and magnitude of contamination in the groundwater. The groundwater sample results will be used to evaluate the need for additional clean-up actions which may be needed to mitigate environmental contamination to health-based levels.

A. Access Restriction

Access to the most highly contaminated areas must be restricted in an expeditious manner. This includes secure fencing of all contaminated areas and measures to limit the access by the public to these areas.

B. Waste Materials, Process Equipment, and Buildings

All leaking and overflowing containers must be immediately stabilized and overpacked. All wastes must be inventoried and characterized, and incompatible materials must be segregated. Waste materials must be collected, containerized, and either treated on site or disposed of in accordance with applicable regulations. These wastes include but are not limited to toxic incinerator ash, toxic baghouse dust, ignitable liquids wastes in above-ground and below-ground storage tanks, sumps, and drums. A plan must be developed and submitted to EPA for approval to address each of these activities. A plan must be developed and submitted to EPA for approval to perform a gross decontamination of the process equipment and the building.

### C. Removal and Management of Drums

A plan for the management of the 20,000 to 40,000 drums stored on the Site must be developed. The plan must include methods for analyzing and determining whether drums contain more than one inch of hazardous waste and properly disposing of those which do, separating drums which are suitable for reconditioning and resale from those which are not and properly disposing of the unreconditionable drums, identifying the sources and previous contents of the drums and managing the removal of drums from the area to facilitate sampling and clean up of soils beneath the drums.

### D. Soil Removal

Soils and dusts containing levels of lead above cleanup levels established by EPA shall be collected and treated/disposed at an offsite facility. Prior to collection and treatment/disposal of the soils and dusts, a comprehensive plan, which describes the sample collection and analysis procedures, removal methods, treatment and/or disposal methods, and verification sampling and analysis criteria, to be used, must be submitted to EPA for approval.

All areas of the site which have not previously been sampled shall be sampled to determine whether cleanup is required to assure that the soils left on site shall not exceed the cleanup levels. A comprehensive plan to sample these areas in a statistically significant manner and analyze the samples must be submitted to EPA for approval.

Contaminated soils shall be excavated in one to three inch lifts from areas of the site determined to exceed the cleanup levels. Contaminated soils shall continue to be removed for treatment/disposal at an offsite facility until the soils remaining on site do not exceed the cleanup levels. A statistically significant number of verification samples must be collected and analyzed from the residual soils to assure that the cleanup levels will not be exceeded.

The soil removal technique must minimize the release of contamination via airborne dust and surface runoff. Following disposal, the contaminated soil in the storage area must be removed and properly disposed. Excavated areas shall be backfilled with clean fill or capped by inert construction material.

#### E. Groundwater Sampling

Additional wells must be installed and additional groundwater samples taken to determine the extent and magnitude of groundwater contamination which has occurred as a result of the soil contamination and operation and disposal practices at the site. A sampling plan shall be developed to determine the extent to which groundwater contamination has migrated from the Site and the levels of contamination present. The plan must be submitted and approved by EPA. All groundwater samples shall be analyzed for total metals and the target compound list of volatile organic compounds.

#### F. Transportation/Shipment of Collected Material

Packaging, labeling, record keeping, placarding, and transportation of the collected material must be in accordance with the applicable Department of Transportation and Resource Conservation and Recovery Act (RCRA) regulations.

#### G. Air Monitoring

Prior to initiation of onsite activity, an air monitoring plan that protects the public from exposures due to airborne contaminants must be submitted to EPA for approval. The plan must address the corrective measures to be taken in the event of a release of airborne contaminants above the Clean Air Act standards. This monitoring should meet the requirements of 40 CFR Part 50, Appendix G, Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air. Ambient air monitored during the cleanup must meet the National Air Quality Standard (NAAQ) for lead.